

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JACK HINSHAW,

No. C 05-3927 CW

Plaintiff,

v.

ORDER DENYING THE  
GESVI LAW FIRM'S  
REQUEST FOR  
ATTORNEYS' FEES

THE VESSEL M/V AURORA, and AL BOURAQ  
AVIATION, INC., a Delaware  
Corporation,

Defendants.

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Plaintiff Jack Hinshaw's former counsel, the Gesvi Law Firm (Gesvi), requests this Court to determine the value of its attorneys' lien for twenty percent of Plaintiff's settlement (Docket No. 197). Plaintiff opposes the award of any attorneys' fees for Gesvi. The matter was decided on the papers. Having considered the papers filed by Plaintiff and Gesvi, the Court denies Gesvi's request for attorneys' fees.

BACKGROUND

On October 7, 2005, Plaintiff signed an attorney-client retainer agreement with Gesvi. The agreement provides that

1 Plaintiff will pay Gesvi the "sum of 40 (forty) percent of the  
2 gross recovery should a lawsuit be filed to commence litigation  
3 proceedings." It explains, "Although Attorney's right to  
4 reimbursement for expenses or costs advanced under this agreement  
5 is not contingent upon a successful outcome, fees are subject to  
6 recovery as follows: 'NO RECOVERY - NO FEES'".

7 Gesvi is located in Southern California. Sid M. Sharif, an  
8 attorney at Gesvi, states that he and Plaintiff understood that, if  
9 the vessel at issue was moved to San Francisco, Mr. Sharif would  
10 find local counsel to make court appearances. Plaintiff, however,  
11 states that it was Mr. Sharif's "unilateral decision" to find  
12 someone to stand in for him in San Francisco.

13 On September 28, 2005, Plaintiff initiated this action.  
14 Mr. Sharif was the only attorney listed on the complaint, which  
15 noted that the Vessel M/V Aurora (the Vessel) was located in the  
16 City and County of San Francisco and that this Court had  
17 jurisdiction over it. In January, 2006, Timothy R. Lord, an  
18 attorney in San Francisco, became Mr. Sharif's co-counsel in this  
19 case. Plaintiff was displeased with Mr. Lord's performance at a  
20 mediation. The relationship between Plaintiff and Mr. Lord broke  
21 down and, on May 12, 2006, Mr. Lord filed a notice disassociating  
22 himself as Plaintiff's counsel. According to Plaintiff, Mr. Lord  
23 withdrew because Plaintiff sent Mr. Sharif a letter complaining  
24 about Mr. Lord and Mr. Sharif then sent that letter to Mr. Lord.

25 Shortly thereafter, Gesvi filed a motion for an order  
26 permitting it and Mr. Sharif to withdraw as Plaintiff's counsel.  
27 In support of the motion, Mr. Sharif stated:  
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1 While I am unable to disclose the contents of my  
2 communications with my client because of the attorney-client  
3 privilege, there has been, in my opinion, a breakdown in the  
4 relationship between myself and Mr. Hinshaw, and particularly  
5 between the client and my associate counsel in San Francisco,  
6 Mr. Lord. I am unable to represent Mr. Hinshaw without  
7 assistance from counsel located in the San Francisco area near  
8 the Courthouse. Mr. Lord has already filed a notice of  
9 disassociation in this case, although it was done without my  
10 consent or that of the client. There also exists a  
11 substantial disagreement between Mr. Hinshaw and me, regarding  
12 how the case should be prosecuted, and Mr. Hinshaw has  
13 reflected his dissatisfaction with the representation of both  
14 counsels. Mr. Hinshaw has also demanded that I expand the  
15 scope of my original representation without compensation,  
16 i.e., relating to a potential claim for sales commissions  
17 entailed in second amended complaint [sic] promising a bonus  
18 only.

19 (Docket No. 70).

20 On July 6, 2006, after Plaintiff consented to substitute  
21 himself in pro per in place of counsel, the Court granted Gesvi's  
22 and Mr. Lord's motions to withdraw. Mr. Sharif states that, even  
23 after the withdrawal, he twice helped Plaintiff draft some  
24 pleadings and that Plaintiff agreed to pay him \$250.00 an hour,  
25 half of what Mr. Sharif normally charges on an hourly basis. Mr.  
26 Sharif states that Plaintiff has never paid him. In Plaintiff's  
27 reply, he states that there was no discussion of fees for these  
28 legal services and that Mr. Sharif provided him with no invoice.  
Without providing further explanation, Plaintiff states that the  
work Mr. Sharif did after his withdrawal as counsel "was for his  
benefit as much as mine."

On March 21, 2007, Gesvi filed a notice of lien for attorneys'  
fees. The Court denied without prejudice Plaintiff's pro se motion  
to reject or to quash the lien. Because Plaintiff had not yet  
recovered damages, the Court did not address whether Gesvi's

1 withdrawal was justified or whether services provided by the firm  
2 were intended to and did benefit Plaintiff.

3 DISCUSSION

4 The Notice of Lien for Attorneys' Fees provides that Gesvi  
5 claims a lien in the amount of forty percent of "the gross  
6 settlement as per retainer agreement." In Mr. Sharif's October 17,  
7 2007 declaration, he states that Gesvi seeks to enforce the lien  
8 for twenty percent of the settlement amount, which he claims  
9 represents half of his attorneys' fees. However, in Mr. Sharif's  
10 November 16, 2007 declaration, he has reinstated his original  
11 request for forty percent of the settlement. Plaintiff argues that  
12 Gesvi is not entitled to any fees, including recovery in quantum  
13 meruit.

14 An attorney who voluntarily withdraws from a case without good  
15 cause forfeits recovery for services performed. Estate of Falco v.  
16 Decker, 188 Cal. App. 3d 1004, 1014 (1987). However, if the  
17 attorney has "justifiable cause" for withdrawing, recovery for  
18 services in quantum meruit is allowed. Id. Justifiable cause for  
19 withdrawal can exist where an attorney becomes incapable of  
20 performing the agreed upon services. Cazares v. Saenz, 208 Cal.  
21 App. 3d 279, 285 (1989) ("Where a contract contemplates the  
22 personal services of a party, performance is excused when that  
23 party dies or becomes otherwise incapable of performing.").  
24 Withdrawing from a case due to personality clashes, however, "is  
25 not necessarily a justifiable reason for purposes of awarding  
26 fees." Falco, 188 Cal. App. 3d at 1014.

27 As explained in Rus, Miliband & Smith v. Conkle & Olesten:

1 To allow an attorney under a contingency fee agreement to  
2 withdraw without compulsion and still seek fees from any  
3 future recovery is to shift the time, effort and risk of  
4 obtaining the recovery . . . from the attorney, who  
5 agreed to bear those particular costs in the first place,  
6 to the client . . . . It is a very tough row which a  
contingency fee attorney originally agrees to hoe. Thus  
it is unassailably unfair to allow him or her to escape  
that labor absent the most compelling of permissive  
reasons -- reasons that, as Falco indicated, must pass  
heightened scrutiny.

7 113 Cal. App. 4th 656, 675-76 (2003).

8 Mr. Sharif claims that he withdrew for several reasons.

9 First, Mr. Sharif states that he was unable to continue  
10 representing Plaintiff without local co-counsel because he could  
11 not travel from his office in Southern California to San Francisco  
12 due to a medical condition. Mr. Sharif further states that he  
13 could not find a replacement for the local co-counsel who withdrew  
14 because he could not find another attorney who was willing to take  
15 the case on a contingent-fee basis. Given Mr. Sharif's existing  
16 medical condition, the risk that he might not have been able to  
17 represent Plaintiff if he could not find local co-counsel was  
18 foreseeable. Mr. Sharif has not presented a compelling reason to  
19 shift this risk to Plaintiff.

20 Mr. Sharif also provides several examples of Plaintiff's  
21 conduct that he claims made it unreasonably difficult for him to  
22 proceed with the litigation. For example, Mr. Sharif states that  
23 Plaintiff rejected his advice to accept a settlement offer of  
24 \$175,000. However, a client's refusal to accept a settlement  
25 cannot in itself constitute cause for withdrawal. Falco, 188 Cal.  
26 App. 3d at 1018.

27 Mr. Sharif also states that, against his advice, Plaintiff  
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1 caused a mediation to fail by revealing the identity of the seller  
2 of the Vessel to the buyer. Mr. Sharif claims that, once the  
3 mediation broke down, he had to expand the scope of his  
4 representation by filing a new motion and two amended complaints.  
5 Mr. Sharif states that Plaintiff would not sign a new retainer  
6 agreement commensurate with this expanded scope of representation.  
7 Even if Mr. Sharif expanded the scope of his representation without  
8 a new retainer agreement, the crucial element in determining  
9 whether he should receive attorneys' fees "is the existence of a  
10 justifiable reason for withdrawing, not the quantity of time  
11 expended." Falco, 188 Cal. App. 3d at 1014.

12 Although Mr. Sharif's examples are indicative of a personality  
13 clash between himself and Plaintiff, they do not sufficiently  
14 establish that he was incapable of representing Plaintiff. See  
15 Cazares, 208 Cal. App. 3d at 285.

16 The cases that Mr. Sharif cites are inapposite. In Moore v.  
17 Fellner, 50 Cal. 2d 330, 338 (1958) and Mardirossian & Associates,  
18 Inc. v. Ersoff, 153 Cal. App. 4th 257, 262 (2007), the plaintiff  
19 attorneys were awarded fees after being terminated by their  
20 respective clients. Here, the attorney, Mr. Sharif, permissively  
21 withdrew from representation.

22 Mr. Sharif has sufficiently justified his permissive  
23 withdrawal from the case. However, "[t]he law governing an  
24 attorney's right or duty to merely withdraw from a case—and be done  
25 with it for good—is a different question than an attorney's right  
26 to withdraw and then later recover." Rus, 113 Cal. App. 4th at 673  
27 (internal quotations omitted). Because Mr. Sharif permissively  
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1 withdrew from the case, the Court must evaluate his reasons for  
2 doing so with heightened scrutiny. Rus, 113 Cal. App. 4th at  
3 675-76. When viewed in this light, Mr. Sharif's reasons for  
4 withdrawing are not compelling enough to justify an award of  
5 attorneys's fees. Accordingly, Gesvi's request for attorneys' fees  
6 is denied.

7 CONCLUSION

8 For the foregoing reasons, the Court denies Gesvi's request  
9 for attorneys' fees (Docket No. 197).

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11 IT IS SO ORDERED.

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13 Dated: 12/6/07



14 CLAUDIA WILKEN  
15 United States District Judge  
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